G R S App [IX 4]

1943-44 (Jul) File No 45-43

Previous References

Serial Nos 6

Later References

Rev 208-43 (1-3)

GENERAL AND REVENUE SECRETARIAT

Serial Nos

Part B for Rev 43

SUBJECT

Reconstitution of the Nandya Municipal Council

Copy of Govt Nandya dt 5226 & 48/11/47 Issues certain instructions

226/2

Reconstitution of the Mandya Municipal council 3282/P/43

Continuation Sheet Mmd File No / Current No 45 of 43 Page 2698

A 6

From the Divisional Mandya Rr
no A5626/43-44 of 2 11 43
Requests in the circumstances explained that the resolutions passed by the Mandya Municipal council grant the right of having two votes to certain persons thereon may be cancelled

Fl

Sir I invite a copy of the Town Municipal Election rules the Mandya municipal council have in the application of which owing conceded the right of double votes to some person but the Municipal President of the Mandya Corporation that the interpretation given by the Municipal Council for Rule 6(1) of the rules is not correct & the latter has recommended that the municipal resolution in the matter may be cancelled Sirs for orders the date of poll in elections is stated to have been fixed 3/11/43 for 28 11 43

The opinion of the Law Secretary may perhaps be obtained in the first instance by the Mandya Municipal Council immediately

SECY LAW DEPT 13 GOVT COPY

Lawsec 3 11 43
Secy 3-11-43

In favour of opinion

XXX Secy (Lawsec) for 4/11/43 me 3/11/43

Law 62/43
4/11/43

Rule 6 of the Rules relating to the Election of Members of the Municipal Council shows that the person possessing the qualification under Rule 5(A) of the Rules, is "an individual family or a Firm", when after the Returning Officer under O XII or the Municipal Council under 6(2), shall enter the name of the Manager or Senior member of such family or Firm, to vote on behalf of the family or Firm. This is because, neither the individual family nor the Firm can vote except through an accredited agent.

In this case, it is found that many members, sent in their applications to the Council, that they have been shown in the Electoral rolls as voters in their representative capacity under Rule 5A, & that they are entitled under the Rule to vote also in their individual capacity, & that the Board should amend forthwith them the right of double voting under Rule 6(3) of the Rules.

Now "the prescribed authority" to effect changes in the electoral roll is the Municipal Council (vide R 10 of the Rules) so the applicants approached the proper authority.

The main contention of the President of the Council is that as the Manager of Khata of these members stood in their

Rule 6 of the Rules relating to the election of members of the Town Municipal Council shows that the person possessing the qualification under Rule 5(A) of the Rules, is "an undivided family or a firm, then either the Returning Officer under Rule 6 (1) or the Municipal Council under Rule 6(2) shall enter the name of the Manager or senior member of such family or firm, to vote on behalf of the family or firm This is because, neither "the undivided family nor the firm" can vote except through an accredited agent

In this case, it is found that many members, sent in their application to the Council, that they have been shown in the Electoral rolls as voters in their representative capacity under Rule 5 A, and that they are entitled under the Rule to vote also in their individual capacity, and that theRoll be amended giving them the right of double voting under Rule 6 (3) of T M E Rules

Now "the prescribed authority" to effect changes in the electoral roll is the Municipal Council (vide R 10 of T M-E Rules) and so the applicants approached the proper authority

The main contention of the President of the Council is that as the Municipal khate of these members stood in their individual name, they are not entitled to double-voting and so the Council was wrong in changing the electoral roll He further states that before being

entitled for double-voting, they ought to have changed their khates to the name of their undivided family and then sought for a change on that basis There is no doubt, some force in this argument

It is admitted that in the column of khatedars, the name of the members alone is noted, for example, Mr B M Krishnaswamy is an applicant, and his name in the Municipal khate is noted as "B M [illegible]" Prima facie it is in his individual capacity It is presumed, that a like entry is to be found in the Electoral Roll This fact is not contested - but from the note of the President it is seen that "the point urged at the meeting was, that it is to be presumed that though the assessment qualifications is registered in the khates in their individual names, it is only as representatives of their undivided families that the registry has been made, as the applicants all belong to undivided families, and that their statement to that effect has to be counted against the actual entry in the Municipal khates " This argument is also to be taken into account in deciding the point at issue

No doubt in Law, so far as a Hindu family is concerned, it is to be presumed that it is undivided, - but such a presumption can be rebutted Even in this case such a presumption can be raised, and the Municipal Council being the prescribed authority to determine such

WD 01809—GPB—60 000—26 1 43

points, can make use of this general principle, while deciding the point at issue Further, "Khate" is not the index to show whether a family is or is not undivided A khate may be in the individual name of a person and yet that person may be the Yajaman of the undivided family This is a question of fact and a matter of proof

So I do not quite agree with the President when he says that the procedure adopted by the Council is irregular

The next question is, can Government interfere in this matter? The Council is the prescribed authority on such matters, and the Electoral Roll was changed on the majority votes of the members of the Council If at all, there is an appeal from the decision of the Council, it may be under R 8 (5) to the Deputy Commissioner and his decision is final Anyway, I feel that the Deputy Commissioner has to act in such cases only under Section 194 of the T M Act but I do not think that the Resolution in question comes under Section 194 Hence even if the change made by the Council is held to be irregular I fear the Government cannot interfere The Deputy Commissioner may do

The Deputy Commissioner may be informed that there is no provision in law for Government to interfere in this case

Law Secretary 3/11/43

Reconstitution of the Mandra Tribunal - cl

Continuation Sheet | File No / Current No | of 2695/2 | Page

The Municipal Court had the right to decide the question under R 6 It had jurisdiction to decide the question as it considered that the decision might be wrong An appeal lies against the decision of the Commissioner under R 6(6) Para the proper remedy

Can 6 11 43

Mr Seay / L&S / 8/11/43

Left reply is subject for appl

Lawley / 11/11/43

Mr Skeen attended to

SFOY LAW 11 464 GOVT OF

OFFICE OF THE MINISTER FOR L S G & P H Date 11 11 43 No 2973

May be approved

Can 11-11-43

Mr Seay 16/11/43

Can 17-11-43

TYPI SECTIO 17 NOV 1943 GEN A CTT

To the D C Mandya D Sonstow

L 5226 dy 18.11.43

WD 01809—GPB—60 000—26 1 43

19/11/43 B

Issues certain instructions in the matter

22/11

No 626/43-44
Encl one file

Office of the Deputy Commissioner,
Mandya District
Mandya, dated 2nd November, 1943

45-43-6

From

Mir Safdar Hussain, Esq , B A ,
Deputy Commissioner,
Mandya District

SECRET
2698/L
3 NOV 1943
L S G BRANCH

SECY LAW DEPT
To 1943
COVT OF MYSORE

C Narayanaswami Naidu, Esq , B A , B L ,
Secretary to Government,
Law Department, Bangalore

Sir,

Sub - Reconstitution of Mandya Municipal Council

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In forwarding herewith the entire correspondence received from the President, Mandya Town Municipality with his report No H C 18/43-44 dated 31st October 1943 on the above subject, I have the honour to state that on the representation of some of the voters that they are entitled to 2 votes under Rule 6(1) of the Town Municipal Election Rules, the Municipal Council have decided in their meetings held on 20-9-43, 18-10-43 and 27-10-43 that the applicants are entitled to 2 votes - even though the President explained to the Municipal Council that the interpretation of the rule 6(1) is not correct The point at issue is explained in detail in the President's report

As regards the interpretation of the rule 6(1) of the Town Municipal Election Rules, I agree with the opinion of the President

If Government also agree with the views expressed in the President's letter, I request that as recommended by the - President, the resolution of the Municipal Council referred to may be cancelled in so far as the inclusion of the persons mentioned in the list for a second vote is concerned As the date of election has been fixed on 28-11-43, immediate orders of Govern-ment are requested as if the procedure adopted by the Municipal Council is found to be illegal, the whole election proceedings

proceedings could be null and void

The records enclosed may kindly be returned when no longer necessary.

I have the honour to be,

Sir,

Your most obedient servant,

Deputy Commissioner,
Kandya District

No A5 626/43-44 Office of the Deputy Commissioner,
Mandya District,
Dated, Mandya, the 15th Nov 1943

From
Mir Safdar Hussain, Esq , B
Deputy Commissioner, Mandya District,
M a n d y a

To
Narayanaswamy Naidu, Esq , B A , B L ,
Secretary to Government, Law Department,
B a n g a l o r e

Sir,

I have the honour to invite your kind reference to my letter of even number dated 2-11-1943 regarding the eligibility of a voter to exercise two votes and to request early orders of Government in matter as the election is fast approaching

I have the honour to be
Sir,
Your most obedient Servant,

For Deputy Commissioner,
Mandya District

Appendix F G —1]

SUBJECT

Section gnl

File No 45-43

Serial No 8

Diary No of letter replied to

No 5-226/WJR

To

General and Revenue Secretariat

( )

the *194*

Date of issue 18/11

Signed by

The D C Nandyal

Sir,

With reference to your letter No A5- 626/43 dt 2 11 43 requesting ~~[illegible]~~ in the circumstances stated, that the resolutions dt 20-9-43, 12-10-43 and 27-10-43 passed by the Nandyal Town Municipal Council granting the right of having two votes to certain persons in the ensuing municipal elections at the places, may be cancelled, I am directed to invite refere

List of enclosures

Copied by

Examined by

As Rule 6(3) of the Town Mal election rules
according to
~~under which~~ any person is permitted to vote
not only in his individual capacity but
and
also as a representative of ~~such~~ incorporated
family or company or firm etc of individuals
in limelees and his name shall be entered
in the list of voters as if he were entitled
to vote separately in each of such capacities
and to this extent the resolutions of the Mal el
would be ~~affected~~

It is however seen from the list
submitted by the Nandya Town Mal el showing
the names of candidates who may be
given the privilege of double votes, that
the Mal el have allowed such persons
to have two votes based on some of the
qualifications prescribed in Rule 5 I am to point
out that ~~section~~
this is opposed to clause (4) of Rule 6 of
the election rules

Records accompany

I have
the
honour
to be
Sir,
Your most obedient
servant,
Asst Revenue Officer.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

No L 5226/W/R

General and Revenue Secretariat

Dated Bangalore, 18th [illegible]

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore

Law Department

To

The Deputy Commissioner,
Mandya District,
M a n d y a .

Sir,

With reference to your letter No.A5. 626/43 dated 2nd November 1943 requesting, in the circumstances stated, that the resolutions dated 20th September 1943, 12th October 1943 and 27th October 1943 passed by the Mandya Town Municipal Council granting the right of having two votes to certain persons in the ensuing municipal elections at the place, may be cancelled, I am directed to invite reference to Rule 6(3) of the Town municipal election rules according to which any person is permitted to vote not only in his individual capacity but also as a representative of an undivided family or company or firm etc., of individuals or trustees and his name shall be entered in the list of voters as if he were entitled to vote separately in each of such capacities and to this extent, the resolutions of the municipal council would be ~~alright~~. all right

It is however seen from the list submitted by the Mandya Town municipal council showing the names of candidates who may be given the privilege of double votes, that the municipal council have allowed such persons to have two votes based on some of the qualifications prescribed in Rule 5. I am to point out that this is opposed to clause (4) of Rule 6 of the election rules

Records accompany.

I have the honour to be
Sir,
Your most obedient servant,

[signature]

for Secretary to Government,
Law Department.

BNK/2.